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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,414	12/27/2001	Christopher Pasqualino	13315US02	1160
23446 7590 01/30/2009 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: CHRISTOPHER PASQUALINO

Application No. 10/034,414
Technology Center 2600

Mailed: January 30, 2009

Before TOI JOHNSON *Review Paralegal*
JOHNSON, *Review Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 15, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF

Status of Claims

The Appeal Brief dated July 28, 2008 is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004. A review of the file finds that the status of the claims as provided in the Appeal Brief under the heading “Status of Claims” is unclear with the status of claims of record in accordance with 37 CFR 41.37(c)(1)(iii). The status of the claims as provided in the Appeal Brief must be consistent with the last entered amendment. Each claim on appeal must be identified. *See also Manual of Patent Examining Procedure (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007)* for details.

Specifically, Appellant has not indicated which claims are being appealed. Correction of the status of all claims is required.

Summary of Claimed Subject Matter

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification ***requires* somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. *>For*

each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 4-7 of the Appeal Brief filed July 28, 2008 is deficient because it does not map independent claim 19 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office’s requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

APPEAL BRIEF

There is no indication on the record that the Examiner has considered the above Appeal Brief filed July 28, 2008.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed on July 28, 2008 defective;
- 2) notify Appellant to file a paper properly addressing the status of all appealed claims;
- 3) notify the appellant to submit a paper which corrects the Summary of Claimed Subject Matter section;
- 4) consider the Appeal Brief filed July 28, 2008 as required; and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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